

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

In re:)	
)	
THOMAS GORDON GAITHER, SR.)	Bankruptcy Case No. 14-50426
SHELVY P. GAITHER,)	Chapter 13
430 Janet Avenue)	
Winston-Salem, NC 27104)	
)	
Debtors)	
)	
)	
)	

MOTION TO MODIFY CHAPTER 13 PLAN

NOW COME the Debtors, by and through counsel, and move the Court to modify their Chapter 13 plan pursuant to 11 U.S.C. § 1329. In support of this Motion, the Debtors show as follows:

1. This case was commenced by the filing of a petition with the Clerk of this Court on April 21, 2014.
2. The 341(a) meeting of creditors was held in Winston-Salem, North Carolina, on June 27, 2014.
3. The Chapter 13 plan was subsequently confirmed by order of this Court dated August 18, 2014.
4. At the time of the filing of the petition, Mr. Gaither was working. Mr. Gaither's health later forced him to stop working, and as a result, he went on short-term disability through his employer. Those short-term disability benefits were exhausted in December 2014.
5. Debtors' Chapter 13 plan relied on income that is no longer being received since the male debtor has had to retire due to disability.
6. At the time of the filing of the petition, Debtor Thomas Gaither owed domestic support obligations to Martha Gaither in the amount of \$320.00 per month. This pre-petition obligation arises out of state court actions in Forsyth County, North Carolina, and Mr. Gaither was current on this obligation at the time of the filing of the petition.
7. The Chapter 13 plan required this domestic support obligation to be paid directly by the Debtors outside of the plan.

8. Mr. Gaither's employer was withholding this domestic support obligation first from his wages and then from his short-term disability. When he stopped receiving short-term disability benefits, the employer's withholding for the domestic support obligation necessarily ceased, and as a result, Mr. Gaither fell behind on the payments to Martha Gaither.
9. Mr. Gaither's loss of income was unexpected and caused a significant—albeit temporary—change in the household's financial circumstances.
10. Mr. Gaither's monthly Social Security benefits have since increased, and the Debtors' household expenses have since decreased. The Debtors therefore amended their schedules to evidence this change in circumstances.
11. As a result, the Debtors now have the financial ability to resume paying the domestic support obligation outside the plan and cure the arrears on said obligation as a part of their Chapter 13 plan.
12. This Motion was filed in good faith in accordance with the Debtors' financial situation as defined in 11 U.S.C. § 1325(a)(6).

WHEREFORE, the Debtors respectfully pray of the Court as follows:

1. That the Debtors' Chapter 13 plan be modified to allow the Debtors to pay their car loan and the domestic support obligation outside of the plan and to pay the arrears on the domestic support obligation inside the plan;
2. That the length Debtors' Chapter 13 plan be recalculated to last for 50 months from the date this Motion is approved;
3. That the Debtors have such other and further relief as to the Court may seem just and proper.

This the 28th day of April, 2015.

LEGAL AID OF NORTH CAROLINA, INC.

/s/ John R. Lawson

John R. Lawson

N.C. State Bar No.: 38687

Attorney for Debtors

P.O. Box 20188

Winston-Salem, NC 27120

(336) 725-9162

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)	
)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served Debtors' **AMENDED SCHEDULES** and **MOTION TO MODIFY CHAPTER 13 PLAN** upon:

Thomas Gordon Gaither, Sr.
Shelvy P. Gaither
430 Janet Avenue
Winston-Salem, NC 27104

W. Eugene Metcalf
Metcalf & Beal, LLP
380 Knollwood Street
Suite 450
Winston-Salem, NC 27103

John A. Meadows
2596 Reynolda Road
Suite C
Winston-Salem, NC 27106

Kathryn L. Bringle
Chapter 13 Trustee
P.O. Box 2115
Winston-Salem, NC 27102

William P. Miller
Bankruptcy Administrator
P.O. Box 1828
Greensboro, NC 27402

by depositing the same in a postpaid wrapper properly addressed to each such party or his attorney of record in a post office of other official depository under the exclusive care and custody of the United States Postal Service or by electronic mail, if applicable. Any party that can be served by electronic mail will receive no other form or notice.

This the 28th day of April, 2015.

LEGAL AID OF NORTH CAROLINA, INC.

/s/ John R. Lawson

John R. Lawson

N.C. State Bar No.: 38687

Attorney for Debtors

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